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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 03/06/2003  
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EXAMINER
BORIN, MICHAEL L

ART UNIT	PAPER NUMBER
1631	

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/422,838

Applicant

Liu et al

Examiner

Michael Borin

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34
- 4a) Of the above, claim(s) 3-6, 8-15, 17-23, 25, 26, and 28-34 is/are pending in the application.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 1, 2, and 27 is/are allowed.
- 7) ☒ Claim(s) 7, 16, and 24 is/are rejected.
- 8) ☐ Claims \_\_\_\_\_ is/are objected to.
- \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

Note that Examiner of record has changed. Please address further correspondence to Examiner Michael Borin.

#### *Status of Claims*

Claims 1-34 are pending. Claims 17-23,25,26,28-34 remain withdrawn from consideration as drawn to non-elected groups of inventions.

Amendment filed 04/03/2002 and communication filed 12/13/2002 are acknowledged. Claims 16,24 are amended to correct the inadvertent error in the numbering of SEQ ID numbers in claims 16,24.

The elected species is SEQ ID No. 34. Insofar as the elected compound has been found to be neither anticipated nor rendered obvious by the prior art, the Examiner has extended his search, first, to include other species of claims 7,16,24, and then to a reasonable number of additional species encompassed by claim 1,2. Claims 3-6,8-15 remain withdrawn from consideration as drawn to non-elected species.

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***Information Disclosure Statement***

Applicants' Information Disclosure Statement filed 04/03/2002 has been received and entered into the application. Accordingly, as reflected by the attached completed copies of forms PTO-1449, the cited references have been considered.

***Claim Rejections - 35 USC § 102 and 103.***

The following is a quotation of the appropriate paragraphs of 35 U.S.C.102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371<sup>©</sup> of this title before the invention thereof by the applicant for patent.

Claims 1,2,27 are rejected under 35 U.S.C. 102(e) as anticipated by Dower et al. (US Patent 6,251,864; priority date 06/07/1995).

Dower et al. teach peptide binding to thrombopoietin receptor and compositions thereof. The peptides are preferably dimerized, to increase affinity and/or activity of compounds (col. 5, bottom). In particular, the peptides comprise sequence

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which reads on the structure X2-X10 of TMP identified in claims 1,2 (see col. 5, top), and dimers comprising said sequence (see col. 60, line 59). The referenced dimers

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read on the dimers generally described in claim 1, and more specifically identified in claim 2, wherein X1 = Ala, X11 = Ser, X12 = Phe.

It is the Examiners position that all the elements of Applicant's invention with respect to the specified claims are instantly disclosed by the teaching of the reference.

***Conclusion.***

Claims 7,16,24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7,16,24 are novel and unobvious over the prior art of record or any combination thereof. The prior art of record does not teach or suggest dimers of SEQ ID No. 1 connected from C-terminus of one monomer to N-terminus of the other. US Patent 6,251,864, as well as other patents of the inventors of the referenced patent, teach dimers of the instantly claimed SEQ ID No. 1 connected head-to-head with their C-terminals. See, e.g., US Patent 6,251,864, col. 6,13,56.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Borin whose telephone number is (703) 305-4506. Dr. Borin can normally be reached between the hours of 8:30 A.M. to

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5:00 P.M. EST Monday to Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Woodward, can be reached on (703) 308-4028. The fax telephone number for this group is (703) 305-3014.

Any inquiry of a general nature or relating the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

March 4, 2003

MICHAEL BORIN, PH.D  
PRIMARY EXAMINER

mlb

